IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
WESTERN DIVISION

KATHLEEN B. MOCK, Plaintiff, vs. THARALDSON PROPERTY MANAGEMENT, INC., and THARALDSON EMPLOYEE MANAGEMENT, INC., Defendants.	No. C 99-4068-MWB **MEMORANDUM OPINION AND ORDER REGARDING DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT**

I. INTRODUCTION

In this action, plaintiff Kathleen Mock asserts, in Count I of her complaint, a claim of age discrimination in violation of the federal Age Discrimination in Employment Act (ADEA); in Count II, a claim of age discrimination in violation of Iowa public policy; and in Count III, a claim of failure to pay the required minimum wage, overtime compensation, and a bonus promised and earned, in violation of a portion of the Iowa Wage Payment Collection Act (IWPCA), IOWA CODE CH. 91A. This matter comes before the court pursuant to defendants' December 1, 2000, motion for partial summary judgment. Mock belatedly resisted the defendants' motion for summary judgment on January 11, 2001, and the defendants filed a reply brief and additional exhibits on January 22, 2001. No party requested oral arguments on the defendants' motion and the matter is, consequently, fully submitted on the written submissions.

The defendants' motion seeks, first, summary judgment in favor of defendant Tharaldson Property Management, Inc. (TPM), on all of plaintiff Kathleen Mock's claims on the ground that TPM was not Mock's employer. Second, the defendants' motion seeks

summary judgment on Mock's state-law claim of discrimination in violation of Iowa public policy on the ground that the claim is "preempted" by the Iowa Civil Rights Act (ICRA), IOWA CODE CH. 216. If Mock is allowed to pursue a claim under the ICRA, the defendants contend that any alleged acts of discrimination that occurred more than 180 days before Mock filed her charge with the state administrative agency are untimely. Finally, the defendants seek summary judgment on Count III of Mock's complaint, the minimum wage, overtime, and bonus pay claim under the IWPCA, on the ground that Mock was exempted from the applicable provisions of the IWPCA, because she was a salaried managerial or executive employee and she was in fact paid the salary promised to her. The court will consider each of the defendants' grounds for partial summary judgment in turn.

II. LEGAL ANALYSIS

A. Standards For Summary Judgment

This court has considered in some detail the standards applicable to motions for summary judgment pursuant to FED. R. CIV. P. 56 in a number of prior decisions. *See, e.g.*, *Swanson v. Van Otterloo*, 993 F. Supp. 1224, 1230-31 (N.D. Iowa 1998); *Dirks v. J.C. Robinson Seed Co.*, 980 F. Supp. 1303, 1305-07 (N.D. Iowa 1997); *Laird v. Stilwill*, 969 F. Supp. 1167, 1172-74 (N.D. Iowa 1997); *Rural Water Sys. #1 v. City of Sioux Ctr.*, 967 F. Supp. 1483, 1499-1501 (N.D. Iowa 1997), *aff'd in pertinent part*, 202 F.3d 1035 (8th Cir. 2000), *cert. denied*, ___ U.S. ___, 121 S. Ct. 61 (2000);*Tralon Corp. v. Cedarapids, Inc.*, 966 F. Supp. 812, 817-18 (N.D. Iowa 1997), *aff'd*, 205 F.3d 1347 (8th Cir. 2000) (Table op.); *Security State Bank v. Firstar Bank Milwaukee, N.A.*, 965 F. Supp. 1237, 1239-40 (N.D. Iowa 1997); *Lockhart v. Cedar Rapids Community Sch. Dist.*, 963 F. Supp. 805 (N.D. Iowa 1997). Thus, the court will not consider those standards in detail here. Suffice it to say that Rule 56 itself provides, in pertinent part, as follows:

> Rule 56. Summary Judgment

> (b) For Defending Party. A party against whom a claim . . . is asserted . . . may, at any time, move for summary judgment in the party's favor as to all or any part thereof.
>
> (c) Motions and Proceedings Thereon. . . . *The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.*

FED. R. CIV. P. 56(a)-(c) (emphasis added). Applying these standards, the trial judge's function at the summary judgment stage of the proceedings is not to weigh the evidence and determine the truth of the matter, but to determine whether there are genuine issues for trial. *Quick v. Donaldson Co.*, 90 F.3d 1372, 1376-77 (8th Cir. 1996); *Johnson v. Enron Corp.*, 906 F.2d 1234, 1237 (8th Cir. 1990). An issue of material fact is genuine if it has a real basis in the record. *Hartnagel v. Norman*, 953 F.2d 394 (8th Cir. 1992) (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986)). As to whether a factual dispute is "material," the Supreme Court has explained, "Only disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986); *Beyerbach v. Sears*, 49 F.3d 1324, 1326 (8th Cir. 1995); *Hartnagel*, 953 F.2d at 394. If a party fails to make a sufficient showing of an essential element of a claim with respect to which that party has the burden of proof, then the opposing party is "entitled to judgment as a matter of law." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *In re Temporomandibular Joint (TMJ) Implants Prod. Liab. Litig.*, 113 F.3d 1484, 1492 (8th Cir. 1997). In reviewing the record, the court must view all the facts in the light most favorable to the nonmoving party and give that party the benefit of all reasonable inferences that can be drawn from the facts. *See Matsushita Elec. Indus. Co.*, 475 U.S. at 587; *Quick*, 90 F.3d at 1377 (same). With these standards in mind, the court turns to consideration of the defendants' motion for partial summary judgment.

B. Who Was Mock's Employer?

The defendants have moved for summary judgment, first, in favor of defendant TPM, on all of Mock's claims, on the ground that TPM was not Mock's employer. Instead, the defendants contend that it is undisputed the Mock was employed by another, separate corporate entity, Tharaldson Employee Management, Inc. (TEM), the other defendant in this action. In support of this contention, the defendants have submitted the affidavit of Dawn Schlosser-Greuel, who identifies herself as "manager of human resources for Tharaldson companies, including Tharaldson Employee Management, Inc. and Tharaldson Property Management Incorporated." Defendants' Exhibit 1 in Support of Motion for Partial Summary Judgment, Affidavit of Dawn Schlosser-Greuel, ¶ 1. Ms. Schlosser-Greuel avers, in essence, that TEM and TPM "are two separate corporations" and that, throughout her training and employment, Mock was employed only by TEM. *Id.* at ¶¶ 1-3.

In response, Mock argues that TPM has nevertheless been properly joined under Iowa Rule of Civil Procedure 24(a).[1] She contends further that TPM recruits management personnel and that training materials she received were titled "Tharaldson Companies Property Employee Handbook" created by "Tharaldson Companies, Gary Tharaldson, President," based in Fargo, North Dakota. She also contends that the handbook states that "Tharaldson Companies" maintains a policy of employment at will and reserves the right to terminate employees with or without cause, and refers to the polices and procedures of "Tharaldson Companies." Although not expressly articulated, Mock's contention appears to be that the two Tharaldson entities behaved as integrated entities for purposes of liability under the ADEA.

In reply, the defendants contend that Mock has pointed to no evidence to support her

[1]The relevance of an Iowa Rule of Civil Procedure in this federal action, particularly in reference to a federal claim, escapes the court.

contention that TPM employed her. They also contend that Mock's argument that she was somehow an employee of both entities, because TEM and TPM are sometimes included under the umbrella reference of "Tharaldson Companies," just "does not make sense." They contend further that this part of Mock's argument is not supported by any legal authority.

Although neither of the parties has formulated the argument in terms of the proper test, the court concludes that, by the thinnest of margins, Mock has generated a genuine issue of material fact that the two Tharaldson entities, although separate corporations, are nevertheless sufficiently "integrated" or "interrelated" entities that *both* can be held liable for age discrimination as a "single employer," even if only one of them was technically Mock's employer. *See, e.g.*, *Artis v. Francis Howell North Band Booster Ass'n*, 161 F.3d 1178, 1184 (8th Cir. 1998) (separate entities can be consolidated for purposes of determining who is an "employer" under Title VII, in light of the employee "numerosity" requirement in Title VII's definition of "employer," based on the following factors: "'(1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership or financial control'") (quoting *Baker v. Stuart Broadcasting Co.*, 560 F.2d 389, 392 (8th Cir. 1977) (applying these factors from the Fair Labor Standards Act to Title VII)); *see also Knowlton v. Teltrust Phones, Inc.*, 189 F.3d 1177, 1184 (10th Cir. 1999) (applying the "single-employer test, also referred to as the integrated-enterprise test or the true-economic-realities test," to determination of *liability* of related entities under Title VII). This genuine issue of material fact arises—again, by the thinnest of margins—from portions of the record, such as the employee handbook relied on by Mock and her deposition testimony concerning her training, indicating that TEM and TPM had "interrelated operations" and "centralized control of labor relations," *see id.*, to the extent that they did not distinguish between the entities in conducting recruiting and training of employees, instead identifying themselves jointly as "Tharaldson Companies," and from

inferences that, at least to some extent, the two entities had "common management," *see id.*, in that Gary Tharaldson was apparently president of both entities and, in her affidavit, Ms. Schlosser-Greuel specifically identified herself as "manager of human resources for Tharaldson companies, including Tharaldson Employee Management, Inc. and Tharaldson Property Management Incorporated." Defendants' Exhibit 1 in Support of Motion for Partial Summary Judgment, Affidavit of Dawn Schlosser-Greuel, ¶ 1. Therefore, this portion of the defendants' motion for partial summary judgment will be denied.

C. "Preemption" Of Mock's Public Policy Claim

Second, the defendants' motion seeks summary judgment on Mock's state-law claim of discrimination in violation of Iowa public policy on the ground that the claim is "preempted" by the Iowa Civil Rights Act (ICRA), IOWA CODE CH. 216. In her response to the defendants' motion, Mock "concedes that the public policy count is probably preempted by Iowa Code Chapter 216." *See* Plaintiff's Resistance To Defendant's [sic] Motion For Partial Summary Judgment, ¶ 2.

This court has noted that the effect of IOWA CODE CH. 216 is that it provides the "exclusive remedy" for discrimination claims, not that it "preempts" any claims, because "'[p]reemption' has traditionally referred to situations in which federal law displaces state law, or the law of one level of government displaces the law of another." *See Thompto v. Coborn's, Inc.*, 871 F. Supp. 1097, 1108 n.4 (N.D. Iowa 1994) (citing *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 604-06 (1991)). Nevertheless, this court has also repeatedly recognized that the Iowa Supreme Court has held that IOWA CODE § 216.16(1) renders Chapter 216's remedies "exclusive" and "preemptive" of other state-law claims. *See Westin v. Mercy Med. Servs., Inc.*, 994 F. Supp. 1050, 1056 (N.D. Iowa 1998) (citing *Greenland v. Fairtron Corp.*, 500 N.W.2d 36, 37 (Iowa 1993)); *Knutson v. Sioux Tools, Inc.*, 990 F. Supp. 1114, 1120 (N.D. Iowa 1998) (citing cases); *Thompto*, 871 F. Supp. at

1108-09. Mock has not asserted that she is in any way seeking to remedy a claim that is "separate and independent" of a Chapter 216 claim, such that her "public policy" claim might fall outside the scope of Chapter 216's exclusive remedies for age discrimination. *See, e.g.*, *Westin*, 994 F. Supp. at 1056 (citing *Greenland*, 500 N.W.2d at 38). Therefore, the portion of the defendants' motion for partial summary judgment seeking summary judgment on Count II of Mock's complaint will be granted.

Moreover, summary judgment in favor of the defendants on Count II of Mock's complaint moots the question of whether Mock has asserted a "continuing violation" of IOWA CODE CH. 216. Mock has never asserted or attempted to assert a Chapter 216 claim in this litigation, and such a claim may be time-barred, so that the court need not reach the question of whether Mock ever could have asserted a "continuing violation" of the Iowa Civil Rights Act.

D. Mock's Wage Claim

Finally, the defendants seek summary judgment on Count III of Mock's complaint, which is a claim for failure to pay her the required minimum wage, a bonus promised and earned, and overtime in violation of IOWA CODE CH. 91A. As this court noted above, this statute is a portion of the Iowa Wage Payment Collection Act (IWPCA). The defendants contend that they are entitled to summary judgment on Count III, at least as to Mock's overtime and minimum wage claims, because Mock was exempted from the applicable provisions of the IWPCA, in that she was a salaried managerial or executive employee and she was in fact paid the salary promised to her. The defendants also contend, in their reply brief, that there is no provision of Iowa law regarding overtime pay. Mock, however, contends that the defendants failure to pay her a bonus and salary resulted in wages that were less than the current federal minimum wage based on the number of hours she was required to work and that "[t]here is no exemption pointed to by the Defendant which

encompasses the Plaintiff's employment." *See* Plaintiff's Resistance To Defendant's [sic] Motion For Partial Summary Judgment, ¶ 4.

IOWA CODE § 91A.2(7) defines "wages" to mean, *inter alia*, "compensation owed by an employer for . . . [l]abor or services rendered by an employee, whether determined on a time, task, piece, commission, or other basis of calculation." IOWA CODE § 91A.2(7)(a). IOWA CODE § 91D.1(b) provides that "[e]very employer . . . shall pay each of the employer's employees . . . wages of not less than the current federal minimum wage pursuant to 29 U.S.C. § 206, or the wage rate stated in paragraph 'a' [defining the minimum wage in Iowa], whichever is greater." IOWA CODE § 91D.1(b). However, the IWPCA also provides that "[t]he exemptions from the minimum wage requirements stated in 29 U.S.C. § 213 shall apply," with exceptions not at issue here. IOWA CODE § 91D.1(2). The federal exemptions to minimum wage requirements include compensation of "any employee employed in a bona fide executive, administrative, or professional capacity. . . ." 29 U.S.C. § 213(a)(1).

The court finds that the defendants have not only "pointed to" a pertinent exemption, but that Mock has failed to generate a genuine issue of material fact that she was not a salaried managerial or executive employee exempted from the minimum wage requirements under 29 U.S.C. § 213(a)(1) and IOWA CODE § 91D.1(2). The defendants have pointed to evidence indicating that Mock does not dispute that she was employed as the general manager of the Comfort Inn in Sioux City, Iowa, and that her annual salary for that executive position was $26,000, well in excess of the $250 per week minimum to fall within the exemption. Although Mock apparently asserts that, under applicable tests, she was not in fact an "executive" or "administrative" employee, apparently suggesting that an excessive percentage of her time was not spent in exempted activities, she has utterly failed to indicate what parts of the record demonstrate that fact or put that fact genuinely in dispute. The party resisting a motion for summary judgment, here Mock, is required under

Rule 56(e) to go beyond the pleadings, and by affidavits, or by the "depositions, answers to interrogatories, and admissions on file," designate "specific facts showing that there is a genuine issue for trial." FED. R. CIV. P. 56(e); *Celotex*, 477 U.S. at 324; *Rabushka ex. rel. United States v. Crane Co.*, 122 F.3d 559, 562 (8th Cir. 1997), *cert. denied*, 523 U.S. 1040 (1998); *McLaughlin v. Esselte Pendaflex Corp.*, 50 F.3d 507, 511 (8th Cir. 1995). "[A] non-moving party may not rest upon mere denials or allegations," which is all that Mock has offered here, "but must instead set forth specific facts sufficient to raise a genuine issue for trial." *Rose-Maston v. NME Hospitals, Inc.*, 133 F.3d 1104, 1107 (8th Cir. 1998); *Thomas v. Runyon*, 108 F.3d 957, 959 (8th Cir. 1997)*; Ruby v. Springfield R-12 Pub. Sch. Dist.*, 76 F.3d 909, 911 (8th Cir. 1996). Therefore, Mock has failed to point to any evidence "such that a reasonable jury could return a verdict for [Mock]" on the basis of her assertions regarding tests for exempted employees. *Anderson*, 477 U.S. at 248. Mock's submission of the text of her entire deposition, without reference to any pertinent portions of the deposition, does not meet Mock's burden under Rule 56. Thus, the defendants are entitled to summary judgment on that portion of Count III of Mock's complaint asserting that Mock was not paid the required minimum wage or overtime pay.

However, Mock's assertion that she was not paid a bonus, as promised and earned, fares somewhat better. The court does not find that the defendants ever asserted that it was undisputed that Mock had been paid such a bonus, although they strenuously contended that she was paid all of the salary she had earned. Indeed, the defendants' motion for summary judgment on the wage claim was expressly stated in the defendants' brief to be that, "*at least as to* the overtime and minimum wage claims, [Iowa Code Ch. 91A] is inapplicable and Summary Judgment *on those portions* of Count III is appropriate." Defendants' Brief In Support Of Motion For Partial Summary Judgment at 4 (emphasis added); *see also* Defendants' Reply Brief In Support Of Motion For Partial Summary Judgment at 2-5 (nowhere asserting that summary judgment is appropriate on the claim for payment of a

bonus). As plaintiff contends, the Iowa Supreme Court has concluded that a "bonus" may fall within the definition of "wages" to which the IWPCA applies. *See Dallenbach v. MAPCO Gas Prods., Inc.*, 459 N.W.2d 483, 487-88 (Iowa 1990) (an annual bonus may be "wages" within the meaning of former IOWA CODE § 91D.2(4)(a), now IOWA CODE § 91D.2(7)(a), where the bonus was "not a gift," but was a payment in compensation for labor or services that the employer was contractually required to pay). Therefore, this portion of Count III survives the defendants' motion for partial summary judgment.

IV. CONCLUSION

Upon the foregoing, the court concludes that the defendants' motion for partial summary judgment should be, and hereby is, **granted in part and denied in part**. Specifically,

1. That portion of the defendants' motion for partial summary judgment seeking summary judgment in favor of defendant Tharaldson Property Management, Inc. (TMP), on all of Mock's claims, on the ground that TMP was not Mock's employer, is **denied.**

2. That portion of the defendants' motion for partial summary judgment seeking summary judgment on Count II of Mock's Complaint, on the ground that IOWA CODE CH. 216 provides the exclusive remedy for the "public policy" claim asserted therein, is **granted**. Count II is hereby **dismissed**.

3. That portion of the defendants' motion for partial summary judgment seeking summary judgment in the defendants' favor on the "minimum wage" and "overtime" portions of Count III of Mock's complaint is **granted**. However, that portion of Count III seeking payment, under the Iowa Wage Payment Collection Act, of a bonus promised and earned survives the granting of the defendants' motion for partial summary judgment.

IT IS SO ORDERED.

DATED this 12th day of February, 2001.

_____

MARK W. BENNETT
CHIEF JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA